ANNEXURE-C
High Court of Madhya Pradesh, Jabalpur
Bench at Indore, Indore
CONTINUATION ORDER SHEET

Writ Petition No.7140/2018
(M/s. Shorya Enterprises
Through its proprietor
Piyush Parulkar s/o Laxmikant Parulkar
Versus
Madhya Pradesh Pollution Control Board & others)

Indore, Dated 30.07.2018

Shri Vinay Kumar Zelawat, learned Senior Counsel assisted by Shri Pratyush Mishra, learned counsel for the petitioner.

Shri Aniket Abhay Naik, learned counsel for respondents No.1 to 3 / Madhya Pradesh Pollution Control Board.

Shri Vijay Sharma, learned counsel for respondent No.4 / Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Limited.

Smt. Archana Kher, learned Government Advocate for respondent No.5 / State of Madhya Pradesh.

Shri Lucky Jain, learned counsel for respondent No.6 / Indore Municipal Corporation, Indore.

Heard on the question of admission.

O R D E R

By this writ petition under Article 226 of the Constitution of India, the petitioner is challenging order dated 23.02.2018 (Annexure P/5) passed by the Regional Officer, MP Pollution Control Board, Indore (respondent No.2) on the ground that the same has been

passed on the basis of complaint lodged upon the Chief Minister Helpline on 17.02.2018; on the back of the petitioner, a Team was constituted and without giving any show cause notice to the petitioner, the impugned order has been passed in violation to the principles of natural justice; and prays for its quashment.

2. The alleged impugned order dated 23.02.2018 (Annexure P/5) has been passed by Madhya Pradesh Pollution Control Board (respondents No.1 to 3) under Section 33-A of Water (Prevention and Control of Pollution) Act, 1974 and Section 31-A of Air (Prevention and Control of Pollution) Act, 1981.

3. A preliminary objection has been raised by respondents No.1 to 3 / Madhya Pradesh Pollution Control Board on the ground that the aforesaid order is appeal-able to the National Green Tribunal under Section 33-B of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31-B of the Air (Prevention and Control of Pollution) Act, 1981.

4. On merit, Shri Aniket Abhay Naik, learned counsel for respondents No.1 to 3 has submitted that a complaint has been filed on grievance portal in the name of CM Help Line against the petitioner alleging cause of pollution due to industrial activity of the petitioner. Upon such complaint, an inspection has been carried out on 22.02.2018 by an employee (Scientist) of the Madhya Pradesh Pollution Control Board, who

has submitted a report to the effect that the industry of the petitioner is being run in the residential area, and therefore, issuance of notices under the provisions of Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 was proposed.

5. He further submitted that Hon'ble Supreme Court in **Writ Petition (C) No.375/2012 Paryavaran Suraksha Samiti and another** v. **Union of India & others** vide order dated **22.02.2017** has directed continuation of industrial activity only when there is in place a functional "primary effluent treatment plants". Pursuant, respondents No.1 to 3 have published a public notice in daily newspaper Dainik Bhaskar on 16.03.2018 whereby the above order of Hon'ble Supreme Court has been informed to the industries at large and action consequent on failure thereupon.

6. He also submitted that the directions issued by the Madhya Pradesh Pollution Control Board are just, proper and legal, as the petitioner has been running the industry, without obtaining mandatory consent under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 21 of Air (Prevention and Control of Pollution) Act, 1981.

7. Relevant part of order dated **22.02.2017** passed by the Supreme Court in **Writ Petition (C)**

No.375/2012 Paryavaran Suraksha Samiti and another v. **Union of India & others** reads, as under: -

> "4. The question that arises for our consideration is, whether the same is maintained in good order, after the industry itself has become functional. The industry requiring "consent to operate", can be permitted to run, only if its primary effluent treatment plant, is functional. We therefore consider it just and appropriate, to direct the concerned State Pollution Control Boards, to issue notices to all industrial units, which require "consent to operate", by way of a common advertisement, requiring them to make their primary effluent treatment plants fully operational, within three months from today. On the expiry of the notice period of three months, the concerned State Pollution Control Board(s) are mandated to carry out inspections, to verify, whether or not, each industrial unit requiring "consent to operate", has a functional primary effluent treatment plant. Such of the industrial units, which have not been able to make their primary effluent treatment plant fully operational, within the notice period, shall be restrained from any further industrial activity. This direction may be implemented by requiring the concerned electricity supply and distribution agency, to disconnect the electricity connection of the defaulting industry. We therefore hereby further direct, that in case the concerned State Pollution Control Boards make a recommendation to the concerned electrical supply and distribution agency/company, to disconnect electricity supply to an industry, for the reason that its primary effluent treatment plant is not functional, it shall honour such recommendation, and shall disconnect the electricity supply to such defaulting industrial concern, forthwith.
>
> 5. Such an industrial concern, which has been disabled from carrying on its industrial activities, as has been indicated in the foregoing paragraph, is granted liberty to make its primary effluent treatment plant functional to the required capacity, and thereupon, seek a fresh "consent to operate" from the concerned Pollution Control Board. Only after the receipt of such fresh "consent to operate", the industrial activities of the disabled industry, can be permitted to be resumed. In carrying out the

above exercise, we consider it just and appropriate to require, the Pollution Control Boards to carry out inspections, by prioritizing inspections of severely and critically polluted industries, so that visible results emerge at the earliest.

6. Liberty is hereby granted to private individual(s) and organizations, to address complaints to the concerned Pollution Control Board, if any industry is in default. On the receipt of any such complaint, the concerned Pollution Control Board, shall be obliged to verify the same, and take such action against the defaulting industry, as may be permissible in law. Such action, would be in addition to the discontinuation of industrial activity forthwith, in the manner directed herein above (but only after verification).

7. Having effectuated the directions recorded in the foregoing paragraphs, the next step would be, to set up common effluent treatment plants. We are informed, that for the aforesaid purpose, the financial contribution of the Central Government is to the extent of 50 per cent, that of the concerned State Government (including the concerned Union Territory) is 25 per cent. The balance 25 per cent, is to be arranged by way of loans from banks. The above loans, are to be repaid, by the industrial areas, and/or industrial clusters. We are also informed, that the setting up of a common effluent treatment plant, would ordinarily take approximately two years (in cases where the process has yet to be commenced). The reason for the above prolonged period, for setting up "common effluent treatment plants", according to learned counsel, is not only financial, but also, the requirement of land acquisition, for the same.

8. In view of the fact, that the financial position has been taken care of, as has been expressed above, we are of the view, that the setting up of "common effluent treatment plants", should be taken up as an urgent mission. With reference to common effluent treatment plants, which are already under implementation, we hope and expect, that they would be completed within the time lines already postulated. With reference to common effluent treatment plants, which are yet to be set up, we consider it just and appropriate to direct, the concerned State Governments (including, the concerned Union Territories) to complete the same

within a period of three years, from today. We are also of the view, that while acquiring land for the 'common effluent treatment plants', the concerned State Governments (including, the concerned Union Territories) will acquire such additional land, as may be required for setting up “zero liquid discharge plants”, if and when required in the future.

9. During the course of hearing, we were informed by learned counsel, that the running of 'common effluent treatment plants', which are in place, is also a matter of serious concern. In this behalf, it was submitted, that some of the common effluent treatment plants are dis- functional, because of lack of finances, whilst some others are dis-functional, because of the requirement of repairs, which have not been carried out, again because of lack of financial resources.

10. Given the responsibility vested in Municipalities under Article 243 W of the Constitution, as also, in item 6 of the 12th Schedule, wherein the aforesaid obligation, pointedly extends to “public health, sanitation conservancy and solid waste management”, we are of the view, that the onus to operate the existing common effluent treatment plants, rests on municipalities (and/or local bodies). Given the aforesaid responsibility, the concerned municipalities (and/or local bodies), cannot be permitted to shy away, from discharging this onerous duty. In case there are further financial constraints, the remedy lies in Articles 243X and 243Y of the Constitution. It will be open to the concerned municipalities(and/or local bodies), to evolve norms to recover funds, for the purpose of generating finances to install and run, all the “common effluent treatment plants”, within the purview of the provisions referred to herein above. Needless to mention, that such norms as may be evolved for generating financial resources, may include all or any, of the commercial, industrial and domestic beneficiaries, of the facility. The process of evolving the above norms, shall be supervised by the concerned State Government (Union Territory), through the Secretaries, Urban Development and Local Bodies respectively, (depending on the location of the respective common effluent treatment plant). The norms for generating funds, for setting up and/or operating the 'common effluent treatment plant' shall be finalized, on or before 31.03.2017, so

as to be implemented with effect from the next financial year. In case, such norms are not in place, before the commencement of the next financial year, the concerned State Governments (or the Union Territories), shall cater to the financial requirements, of running the "common effluent treatment plants", which are presently dis- functional, from their own financial resources.

11. Just in the manner suggested herein above, for the purpose of setting up of "common effluent treatment plants", the concerned State Governments (including, the concerned Union Territories) will prioritize such cities, towns and villages, which discharge industrial pollutants and sewer, directly into rivers and water bodies.

12. We are of the view, that in the manner suggested above, the malady of sewer treatment, should also be dealt with simultaneously. We therefore hereby direct, that 'sewage treatment plants' shall also be set up and made functional, within the time lines and the format, expressed herein above.

13. We are of the view, that mere directions are inconsequential, unless a rigid implementation mechanism is laid down. We therefore hereby provide, that the directions pertaining to continuation of industrial activity only when there is in place a functional "primary effluent treatment plants", and the setting up of functional "common effluent treatment plants" within the time lines, expressed above, shall be of the Member Secretaries of the concerned Pollution Control Boards. The Secretary of the Department of Environment, of the concerned State Government (and the concerned Union Territory), shall be answerable in case of default. The concerned Secretaries to the Government shall be responsible of monitoring the progress, and issuing necessary directions to the concerned Pollution Control Board, as may be required, for the implementation of the above directions. They shall be also responsible for collecting and maintaining records of data, in respect of the directions contained in this order. The said data shall be furnished to the Central Ground Water Authority, which shall evaluate the data, and shall furnish the same to the Bench of the jurisdictional National Green Tribunal.

14. To supervise complaints of non-

> implementation of the instant directions, the concerned Benches of the National Green Tribunal, will maintain running and numbered case files, by dividing the jurisdictional area into units. The above mentioned case files, will be listed periodically. The concerned Pollution Control Board is also hereby directed, to initiate such civil or criminal action, as may be permissible in law, against all or any of the defaulters.
>
> 15. Liberty is granted to private individuals, and organizations, to approach the concerned Bench of the jurisdictional National Green Tribunal, for appropriate orders, by pointing out deficiencies, in implementation of the above directions.
>
> 16. It however needs to be clarified, that the instant directions and time lines, shall not in any way dilute any time lines and directions issued by Courts or Benches of the National Green Tribunal, hitherto before, wherein the postulated time lines would expire before the ones expressed through the directions recorded above. It is clarified, that the time lines, expressed herein above will be relevant, only in situations where there are no prevalent time line(s), and also, where a longer period, has been provided for.
>
> 17. It would be in the interest of implementation of the objective sought to be achieved, to also require each concerned State(and each, concerned Union Territory) to make provision for "online, real time, continuous monitoring system" to display emission levels, in the public domain, on the portal of the concerned State Pollution Control Board. We are informed, that at least three State Governments have already adopted the aforesaid measures. Such measures shall be put in place by all the concerned State Governments(including, the concerned Union Territories), within six months from today.
>
> 18. The instant writ petition stands disposed of, in the aforesaid terms."

8. His submission is that action has been taken against the petitioner's unit in compliance to order passed by the Hon'ble Supreme Court on 22.02.2017. Photographs annexed by the writ petitioner with writ petition as Annexure P/4 establish the emission of pol-

lutants, smoke etc. through the installed chimney and exhaust; and prayed for dismissal of the writ petition.

9. Shri Vijay Sharma, learned counsel for respondent No.6 / Indore Municipal Corporation also supported the action of the Madhya Pradesh Pollution Control Board and submitted that unit of the petitioner is situated in residential area; and in residential area, no industrial unit is permissible. In the present case, the petitioner, without taking No Objection Certificate from Indore Municipal Corporation, Indore has started the industrial unit, and therefore, Madhya Pradesh Pollution Control Board has not committed any legal error in passing the impugned order.

10. Learned Senior Counsel for the petitioner has drawn our attention to various provisions and submitted that under Section 25 (5) of Water (Prevention and Control of Pollution) Act, 1974, notice is must. The impugned order dated 23.02.2018 has been passed without proper enquiry and investigation. He has also drawn our attention to decision of the Apex Court in the case of **Harbanslal Sahnai** v. **Indian Old Corporation Limited** reported in **AIR 2003 SC 2120** and in the case of **M/s. Allied Motors Limited** v. **M/s. Bharat Petroleum Corporation Limited** reported in **AIR 2012 SC 709**; and submitted that rule of exclusion of writ jurisdiction by availability of alternative remedy is rule of discretion and not one

of compulsion. Admittedly, the impugned order was passed without giving show cause notice and giving an opportunity of hearing; and thus, there is violation of principles of natural justice. This Court rightly entertained the writ petition while staying the impugned order; and prayed that the writ petition be allowed.

11. On due consideration of the arguments of the learned counsel for the parties, so also the fact that on the basis of the order passed by the Apex Court in the case of **Paryavaran Suraksha Samiti and another** v. **Union of India & others** (supra), which has been quoted by us in the preceding paragraph, the industry of the petitioner was causing pollution and without NOC running the industry in the residential area contrary to Master Plan, the action of the Madhya Pradesh Pollution Control Board is just and proper. No case to interfere with impugned order dated 23.02.2018 (Annexure P/5), as prayed for, is made out.

12. Writ Petition No.7140/2018 has no merit and is accordingly dismissed.

(P.K. Jaiswal)
Judge

(S.K. Awasthi)
Judge

Pithawe RC